Supreme Court, U.S.
FILED

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No. 04- ____

In the Supreme Court of the United States

S.L., BY HER MOTHER, CYNTHIA LEE,
Petitioner,

v.

PRINCE WILLIAM COUNTY SCHOOL BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

CYNTHIA LEE
Pro se

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QUESTIONS PRESENTED FOR REVIEW

1. Did the district court judge err when he upheld the hearing officer's decision to deny special education services to S.L. a child with the chronic health impairment sickle cell anemia, which is a qualifying disability as stated in the Individuals with Disabilities Education Act of 1997 (IDEA'97)?

2. Did the Court of Appeals For the Fourth Circuit err in holding that the district court judge made no reversible error in his order denying the Petitioner's Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Fed. R. Civ. P. 60(b)(6) in *S.L. v. Prince William County School Bd.*, No CA-02-1216-A (E.D. Va. Filed October 24, 2003 & entered October 27, 2003)?

PARTIES TO THE PROCEEDING

The parties to the proceeding are set forth in the case caption.

Petitioner
S.L. Lee by her mother, Cynthia Lee (pro se).

Respondent
Prince William County School Board, by their counsel Mary McGowan 4020 University Dr. Suite 300 Fairfax, Va. 22030, telephone number (703) 691-1235.

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OPINIONS BELOW

The October 24, 2003 opinion of the United States District Court For The Eastern District Of Virginia. The June 17, 2004 unpublished opinion of the United States Court of Appeals For The Fourth Circuit. The July 27, 2004 denial of the petition for rehearing from the United States Court of Appeals For The Fourth Circuit.

STATEMENT OF JURISDICTION

Jurisdiction is proper over this writ pursuant to 28 U.S.C. § 1254 (1) because it is an appeal from a final decision of the United States Court of Appeals and is filed within 90 days of the Court of Appeals denial for rehearing.

STATUTORY AND CONSTITUTIONAL PROVISIONS

This case involves the interpretation and application of The Individuals With Disabilities Education Act, Public Law No. 105-17, 111 Stat. 37 (1997), U.S.C. §§ 1400-1412; Section 504 of the Rehabilitation Act of 1973, Public Law No. 93-112 (1973); The Equal Protection Clause of the 14th Amendment of the U.S. Constitution; Article III section (2) of the United States Constitution; and specifically the Federal Rule of Civil Procedure 60(b)(3)(6). In addition, the United States Court of Appeals 4th Circuit has decided an important question of federal law, that in effect has eroded deep rooted constitutional guarantees that must be addressed by this court.

IDEA, Public Law No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1400, 34 C.F.R. § 300.24 provides:

Special education is a "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability..."

IDEA, Public Law. No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1400, 34 C.F.R. § 300.7 provides:

A child with a disability means "a child evaluated in accordance with IDEA" found to have one or more impairments or disabilities "who, because of that impairment needs special education and related services".

IDEA, Public Law. No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1400, 34 C.F.R § 300.7(c)(9) provides:

Other health impairment is a qualifying disability deserving the receipt of special education services. Definition: Other health impairment means having limited strength, vitality, or alertness, that results in limited alertness with respect to the educational environment. The impairment adversely affects a child's educational performance and is due to chronic or acute health problems. These may include, but are not limited to, conditions such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia.

IDEA, Public Law. No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1412 (a) (1) (A) provides:

A free appropriate public education available to all children with disabilities residing in the State between the ages of 3 and 21.

The Equal Protection Clause of the 14th Amendment provides:

If a State offers public education, then all school age children must have equal opportunity to benefit from that public education.

Fed.R.Civ.P. 60(b)(3)(6) provides:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from final judgment, order, or proceeding for the following reasons: ...(3) fraud (whether heretofore dominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party...(6) any other reason justifying relief from the operation of the judgment.

U.S. Const Art. III § 2

In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction both as to Law and Fact...

Supreme Court Rule 10 provides:

a State court or an United States court of appeals has decided an important question of federal law that has not been, but should be settled by this Court...

STATEMENT OF LAW

1. Part B of the Individuals with Disabilities Education Act (IDEA) provides federal grants to States and, through them, to local school districts for assistance in the education of disabled children. Under a statutory formula, each participating State receives federal grant money based on,

among other factors, the number of disabled school-age children in that State. 20 U.S.C. § 1411 (a); see also IDEA 611, as amended by the Individuals with Disabilities Education Act of 1997 (IDEA Amendments Act).

2. A State participating in Part B of IDEA must ensure that each disabled child within the State has available a "free appropriate public education", IDEA (as amended) 3612(a)(1)(A); see also 20 U.S.C. § 1412(2)(B)(1994), that includes all special-education services necessary to meet that child's particular needs. See IDEA (as amended) 612 (a); see also 20 U.S.C. §§ 1412(4), 1414 (a)(5); 34 C.F.R. § 300.341; see generally *Board of Education v. Rowley*, 458 U.S. 176 (1982).

I. Overview of the Case

On October 24, 2003, the United States District Court For The Eastern District of Virginia upheld the hearing officer's decision to deny special education services to S.L. a child with sickle cell anemia, which is a qualifying disability as stated in the Individuals with Disabilities Education Act of 1997 (IDEA'97). The district court judge denied S.L.'s Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Fed. R. Civ. P. 60(b)(6), with the supporting opinion that S.L did not present a "meritorious defense".

The United States Court of Appeals For The Fourth Circuit, on June 17, 2004, held that the district court judge "made no reversible error" in his order denying S.L.'s September 23, 2003 Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Fed. R. Civ. P. 60(b)(6) in *S.L. v. Prince William County School Bd.*, No CA-02-1216-A (E.D. Va. Filed October 24, 2003 & entered October 27, 2003).

II. Background of the Case

As an infant, S.L. was medically diagnosed with sickle cell Hb-S thalassemia, which is form of the chronic health disease sickle cell anemia. S.L. was a transfer student to Woodbridge Senior High School in Prince William County, Virginia, school year 2001-2002. The transfer was for health reasons due to S.L.'s chronic form of sickle cell anemia. S.L.'s attending pediatrician supported the medical transfer and gave the school a "Physician's Authorization For Health Treatment Procedures" dated May 21, 2001.

S.L. became chronically fatigued at the start of school year 2001-2002. Fatigue is a characteristic of sickle cell disease. S.L. alleges that the sickle cell related fatigue caused her to have limited strength, vitality and alertness with respect to her educational environment, which adversely affected her educational performance. S.L. began to fail core classes that were needed to graduate from high school, therefore her mother, who is a master degreed special education teacher, requested special education services for S.L.

January 17, 2002, the school's eligibility committee met and presented pertinent documents that supported S.L.'s eligibility to receive special education services, however the eligibility committee consisting of school personnel and S.L.'s mother, denied S.L. special education services. S.L.'s mother dissented from the decision. Although the eligibility committee did not find S.L. eligible to receive special education services, the committee deemed enough evidence was presented during the eligibility meeting to support rendering S.L. a student in need of a child study plan. Therefore, the school's eligibility committee adjourned and within that instant renamed itself the child study committee

and granted S.L. a child study plan. The child study committee used the same accommodation sheet that was used by the special education department, to develop S.L.'s child study plan. Although deemed unqualified to receive special education services, the school's child study committee gave S.L. special education accommodations through the child study plan, which is not legally binding by federal law.

On February 7, 2002, the child study committee reconvened to review the plan after receiving complaints from S.L.'s mother that several of S.L.'s teachers, specifically her former step team coach/biology teacher, were not following the child study plan. During the meeting S.L.'s mother requested a 504 plan for S.L. due to the fact that eligibility for special education services was recently denied. During the child study committee meeting, S.L.'s mother alleged that S.L. continued to suffer from sickle cell induced fatigue that adversely affected her educational environment by limiting her strength, vitality, that resulted in limited alertness. Teacher educational reports were also presented during this child study committee meeting, which supported the adverse affect S.L.'s sickle cell disease had on her educational environment. S.L.'s P.E. teacher wrote in his February 7, 2002 teacher educational report that S.L.'s weakness in his class was her "physical ability" and that she had a "low attention span". He added that S.L.'s physical problem was "low endurance". S.L.'s orchestra teacher concurred with the P.E. teacher's report when he wrote in his February 5, 2002, teacher educational report that S.L.'s physical problems in his class was "posture problems due to fatigue". Although evidence was revealed that supported the need of special education services or a 504 plan, the child study committee voted to retract the previous accommodations that were given to S.L. and held that S.L. was no longer a child in need of services. S.L.'s mother dissented. In her written dissent, S.L.'s mother alleged that

the retraction of services was due to her complaint that teachers not adhering to the child study plan.

III. Proceedings Below

On February 25, 2002, S.L.'s mother received a Central Office Review of the case. The Prince William County Central Office Review Panel affirmed the school's decision to deny S.L. special education services.

S.L.'s mother obtained an attorney and filed a petition to receive a Due Process Hearing. On May 9, 2002, the due process hearing was held. S.L.'s mother testified concerning her daughter's sickle cell related fatigue and how it adversely affected S.L.'s educational environment thus causing S.L. to fail core academic classes needed to graduate from high school. S.L.'s previous child study plan accommodation sheet was admitted as part of the due process record on behalf of S.L., in an attempt to evidence that the school agreed S.L. was a student in need of services. S.L. also admitted into evidence the May 7, 2002, telephonic testimony from her medical expert witness.

Medical records, letters from S.L.'s treating hematologist, and physician's notes were also entered into evidence, which supported that S.L.'s sickle cell disease was in deed the cause of the fatigue that limited her strength, vitality, which resulted in a limited alertness with respect to her educational environment. The medical records revealed that S.L. suffered from chronic infections, excessively swollen glands (tonsils and adenoids), which obstructed ¾ of her airway, knee pain caused by a benign cyst and fatigue.

On May 7, 2002, a telephonic testimony from S.L.'s medical expert was recorded. He gave in-depth testimony outlining the cause and effects of sickle cell disease. This medical expert's testimony was able to relate S.L.'s chronic and acute infections to her sickle cell disease. He stated as follows, "I think in the scheme of things, children with sickle-cell anemia are at increased risk of infections, and certain infections may become fatal or much more severe, and again, depending upon patient's pre-existing organ damage and disability, even common viral infections can be very serious in these children."

The medical expert testified that there were three primary forms of sickle cell disease. The forms are as follows: Hb-SS, Hb-S Thal., and Hb-SC. He testified that Sickle Cell Hb-SS is considered to be the most severe form of this disease. However, the medical expert clarified this statement by testifying that "within those two variants which are supposed to be mild, there are many patients who can be as severe as the most severe form of the regular kind of sickle-cell anemia. So, just on genetic basis, one cannot make a determination who is going to have more severe disease. It is a totally impossible determination." The medical expert further expounded upon the disease by stating that "anemia is only one small part of a sickle cell disease".

Three classroom teachers, one administrator and the school psychologist testified on behalf of the defendants. For the most part the testimonies given by the defendants were general and opinionated. However, S.L. alleges that two of her teachers' testimonies were profound in nature in that their testimonies were intentionally misleading and fraudulent.

During the due process hearing, S.L. alleges that her P.E. teacher and her biology teacher/former step team coach

rendered fraudulent and misrepresented testimony. S.L.'s P.E. teacher testified during the due process hearing, that throughout the school year S.L. "participated just equally with other students..." in his P.E. class. When questioned about rather or not S.L. took breaks because she was fatigued, the P.E. teacher testified that S.L. did not take "unscheduled" breaks because she was tired. In order to support his testimony concerning S.L.'s endurance level, S.L.'s P.E. teacher testified that S.L. ran 3/4 of a mile in "right over eleven minutes" during their physical fitness testing, which meant that, "she was doing good." S.L.'s P.E. teacher attributed her ability to run well on that day to a "partner" who was "definitely helping her".

S.L.'s mother testified during the due process hearing that S.L. was a member of the step team, however, her sickle cell enhanced illnesses did indeed adversely affect her ability to actively participate. S.L.'s mother testified that S.L's former step team coach and present biology teacher told her that S.L. was placed on team "B" of the step team due to low endurance.

When questioned during the due process hearing, S.L.'s biology teacher/former step team coach testified that S.L. showed no signs of fatigue or low endurance. She also testified that she, "did not have a group that was specified based on endurance." The biology teacher/former step team coach testified that S.L., "was in the less trained group because that was her first year ever stepping with them."

The hearing officer submitted his Decision to affirm the school's denial of special education services, on June 13, 2002. He relied heavily on the alleged fraudulent testimonies of two of S.L.'s classroom teachers. S.L. alleges that in his Decision the hearing officer misrepresented doctor report's,

the testimony of the expert witness, and S.L.'s mother's testimony. She also alleges that the hearing officer excluded pertinent medical records, expert testimony and teacher educational reports from his Decision.

In his June 13, 2002 Decision, the hearing erroneously concluded that S.L.'s form of sickle cell disease was "mild" therefore incapable of adversely affecting S.L.'s educational environment. He wrote as follows: S.L.'s mother "attributes her academic performance to her sickle cell which is mild." "Sickle cell is a serious disease which can be painful and disabling. On the other hand, many sickle cell patients are seemingly not affected. The Student is one of these."

S.L.'s attorney filed a Motion For Summary Judgment on her behalf, In The United States District Court For The Eastern District of Virginia. The district court judge rendered his decision on February 24, 2003. In his Opinion, the district court judge denied S.L.'s Motion For Summary Judgment. He stated that "the decision of the administrative review body was not erroneous". S.L. filed a Motion To Set Aside Judgment Pursuant To Federal Rule Of Civil Procedure 60(b)(6). The district court judge rendered the Motion timely, however denied the Motion on September 8, 2003. S.L.'s mother became her new representative and on September 23, 2003, filed a Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Federal Rule of Civil Procedure 60 (b)(6), pro se. On October 24, 2003, the district court judge denied S.L.'s Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Federal Rule Of Civil Procedure 60(b)(6).

ARGUMENT

1 Did the district court judge err when he upheld the hearing officer's decision to deny special education services to S.L. a child with the chronic health impairment sickle cell disease, which is a qualifiable disability as stated in the Individuals with Disabilities Education Act of 1997 (IDEA'97)?

A proffer of evidence was submitted to the hearing officer which exampled the severity of S.L.'s sickle cell disease and the adverse effect that the sickle cell disease had on her educational environment by causing S.L. limited strength, vitality, and alertness. Although a proffer of evidence was submitted, the hearing officer erroneously represented S.L.'s form of sickle cell disease as "mild" and incapable of causing an adverse effect on her educational environment. He also erred when he relied on misrepresented and fraudulent testimony as the basis of his Decision. The hearing officer's denial of special education service prevented S.L. from receiving a "free and appropriate public education" as provided in Individual With Disabilities Education Act Public Law No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1412 (a)(1)(A).

The district court judge erred in his February 24, 2003 Opinion when he concluded that "the decision of the administrative review body was not erroneous" and relied on the same fraudulent, misrepresented testimony as one basis for his Opinion. In his Opinion the district court judge misinterpreted doctor's notes, the medical expert's telephonic testimony, and pertinent, supporting medical documentation. The district court judge also erred when in his February 24, 2003 Opinion he rendered S.L.'s form of sickle cell disease a "mild course" and incapable of causing an adverse affect on

her educational environment. The district court judge's denial of special education service impeded S.L.'s ability to receive a "free and appropriate public education" as provided in Individual With Disabilities Education Act, Public Law No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1412 (a)(1)(A). Through their denial of special education services both the hearing officer and district court judge committed infractions upon the Equal Protection Clause of the 14th Amendment which provides as follows:

If a State offers public education, then all school age children must have equal opportunity to benefit from that public education.

As aforementioned, in support of their Decisions, the hearing officer and district court judge misinterpreted, misrepresented and excluded pertinent testimony. One such misinterpretation came from a letter dated August 19, 1999, which was submitted into evidence. This letter was written by S.L.'s pediatric hematologist to her primary pediatrician after an annual physical. In this letter the hematologist wrote "As you know, she is a 13-year-old female with S beta plus thalassemia who has had a very "mild course". "She had a single pain crisis in the right arm over the last year." The hematologist's statement was a description of how the sickle cell disease impacted S.L. during that particular year. The statement was not made as an intent to diagnose S.L.'s form of the disease as "mild". However, in their decisions, both the hearing officer and the district court judge misrepresented the hematologist's intentions as a diagnosis of S.L.'s form of sickle cell. The district court judge erred when he concluded that S.L. was repeatedly diagnosed with a "mild course" of sickle cell.

The expert witness testified emphatically that "just on genetic basis, one cannot make a determination who is going to have more severe disease. It is a totally impossible determination." Although this was the expert witness's testimony, the hearing officer and district court judge misrepresented his testimony when they wrote that the expert witness confirmed that "milder cases of sickle-cell anemia produce milder results in patients with sickle-cell anemia"; and that "S.L. had not demonstrated that her mild form of sickle-cell anemia made her any more susceptible to or more likely to suffer severe side effects from common childhood ailments than a child without the disease."

En lieu of this misrepresentation of S.L.'s form of sickle cell disease, S.L. submitted a proffer of additional evidence in her September 23, 2003, Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Federal Rule of Civil Procedure 6(b)(6). This proffer of additional evidence substantiated the fact that S.L. did not have a "mild course" of sickle cell disease. The admitted additional evidence clarified the characteristics of sickle cell anemia and the complexity of S.L.'s chronic form of the disease. S.L. submitted additional evidence in the form of a letter written by her pediatric hematologist's supervisor dated April 30, 2003. His letter reconfirmed the relationship of S.L.'s enlarged glands, which obstructed her airway, to her sickle cell disease. A questionnaire completed by the surgeon who removed S.L.'s swollen tonsils/adenoids, dated April 24, 2003, was also admitted into evidence. His response depicted S.L.'s tonsils and adenoids as "excessively large in size". The surgeon stated that "the excessively swollen glands probably caused poor sleep quality and poor concentration, which could adversely impact school work."

Medical records that outlined the treatment S.L. received after the due process hearing, for numerous sickle cell related pain crises, infections to include pneumonia, and hospitalizations, were submitted as additional evidence in S.L.'s September 23, 2003 Motion To Reconsider Plaintiff's Motion To Set Aside Judgment. Documentation reflecting academic progress was also submitted to depict S.L.'s below average grades that were due to her chronic health condition. The proffer of additional evidence confirmed that S.L. continued to be eligible for special education services "due to" chronic health problems that continued to adversely effect her educational environment and academic performance.

In order to present a meritorious defense in favor of her allegations of fraud and misrepresentation, S.L. obtained and submitted as additional evidence in her September 23, 2003, Motion To Reconsider Plaintiff's Motion To Set Aside Judgment, written testimonies from students who were in her P.E. class and on her step team during the time frame referenced in testimonies during the May 9, 2003 due process hearing.

Additional evidence was submitted in the form of two written testimonies dated April 16, 2003, and May 26, 2003. One written testimony was from the student referred to as S.L.'s "partner" who helped her to run ¾ of a mile in record speed. This student declared in her written testimony that she saw S.L. walking during the mile run and that at times she walked with S.L. because she has asthma and could not run long distances. The additional evidence proved beyond a shadow of doubt that S.L.'s P.E. teacher rendered fraudulent and misrepresented testimony during the May 9, 2002, due process hearing which was the basis of the hearing officer's and district court judge's decisions.

Three written testimonials were submitted as additional evidence from students who were step team members during the school year that was referenced in testimony. One step team member declared in her April 16, 2003, written testimony that this was also her first year ever stepping with the team and she had no more training than S.L. but was placed on team "A" instead of team "B". All three written testimonials revealed that the step team coach told the team that team "B" was for team members who lacked endurance, energy and ability. This additional evidence rendered S.L.'s step team coach/biology teacher's due process hearing testimony fraudulent and confirmed S.L.'s mother's testimony as factual.

Although Fed. R. Civ. P. 60(b)(3)(6) gave the district court judge jurisdiction to grant S.L. relief from the previous judgments, in his October 24, 2003 Opinion, he denied S.L.'s Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Federal Rule of Civil Procedure 60 (b)(6). However, he accepted it's contents, by "treating the motion as one brought under Fed.R.Civ.P. 60(b) as a motion seeking relief from judgment".

In his October 24, 2003 Opinion, the district court judge erred when he found no reason to reconsider his September 8, 2003, Opinion after receiving and admitting the proffer of additional evidence, which confirmed S.L.'s allegations of fraudulent and misrepresented testimony by the adverse party. The district court judge erred when he declared S.L.'s form of sickle cell disease a "mild course". The district court judge erred when he did not relieve S.L. and her legal representatives from final judgment. The district court judge erred when he denied S.L., a student with a qualifiable disability, a "free and appropriate public education" through

special education services. The district court erred by denying S.L. equal protection under the law.

2. Did the U.S. Court of Appeals For The Fourth Circuit err in holding that the district court judge made no reversible error in his order denying the Petitioner's Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Fed. R. Civ. P. 60(b)(6) in *S.L. v. Prince William County School Bd.* , No CA-02-1216-A (E.D. Va. Filed October 24, 2003 & entered October 27, 2003)?

S.L.'s mother appealed the district court judge's October 24, 2003, decision on behalf of her daughter pro se, to the United States Court of Appeals For The Fourth Circuit. On June 17, 2004, the Fourth Circuit erred when the panel of honorable judges affirmed the district court judge's decision, "for the reasons stated by the district court". The panel erred when they did not site material fact or law that would substantiate the district court's denial of the Petitioner's Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant to Fed. R. Civ. P. 60(b)(6). The Fourth Circuit panel also erred when they did not address the questions that were raised, which were of exceptional importance in the proceedings.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10 identifies considerations used by the Court in deciding whether to exercise its discretion to grant a petition for writ of certiorari. The Supreme Court should grant the petition for writ of certiorari based on consideration of Rule 10, which declares that this Court should exercise its discretion because, "a State court or an United States court of appeals has decided an important

question of federal law that has not been, but should be settled by this Court...".

This Court should exercise its discretion to grant a petition for writ of certiorari because Article III section(2) of the U.S. Constitution renders Jurisdiction as stated in part; "In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction both as Law and Fact...".

The Court's review is warranted for all of the following reasons.

I. Review Is Warranted Due To Compelling State Interest Because The District Court's Decision Is In Direct Conflict With The Equal Protection Clause Of The 14th Amendment To The U.S. Constitution and Individual With Disabilities Education Act, Public Law No. 105-17, 111 Stat. 37 (1997), 20 U.S.C. § 1400, Part (B), 34 C.F.R.§§ 300.24, 300.7, 300.7 (c)(9) and 1412(a)(1)(A)

At the time S.L. requested special education services, she was a student in need of special education services. S.L. met all of the criteria that are outlined in the IDEA'97's definition of Other Health Impairments, therefore, S.L. was eligible to receive special education services. In denying S.L. special education services, the district court judge denied her a Free Appropriate Public Education as it relates to 20 U.S.C. § 1412(a)(1)(A) and the Equal Protection Clause Of The 14th Amendment. The people of Virginia care about the receipt of special education services for disabled students, therefore review is warranted due to "Compelling State Interest".

II. Review Is Warranted Because Public Education Provides "A Classic Justification For A Conclusion Of Non-moot ness, Due To The Fact That It Is "Capable Of Repetition, Yet Evading Review"

S.L. graduated from high school June 2004, with a standard high school diploma. Although S.L. has now graduated, this proceeding is not moot due to the fact that the district court judge rendered S.L.'s form of sickle cell disease a "mild course". This decision has set a precedent which will deny special education services to students who do not have the Hb-SS form of sickle cell disease. Categorizing sickle cell disease based on the individual's form of the disease erodes the fundamental and long standing constitutionally embedded presumption that students with the disability sickle cell disease who meet the criteria, are eligible to receive special education services as outlined in IDEA'97, no matter their form of the disease. The supreme court judges' opinion declared in *Roe v. Wade*, 410 U.S. 113 (1973), that a classic justification for a conclusion of non-moot ness is a case such as S.L. v. Prince William County School Board, which is "capable of repetition, yet evading review". Therefore review is warranted because this case is "capable of repetition, yet evading review".

III. Review Is Warranted Because The Decision Of The United States Court of Appeals, Fourth Circuit, Has Decided An Important Question of Federal Law That Has Not Been, Yet Should Be, Settled By This Court

CONCLUSION

The petition for a writ of certiorari should be granted because the U.S. Court of Appeals For The Fourth Circuit erred when they affirmed the district court judge's decision "for the reasons stated by the district court". The panel erred when they did not site material fact or law that would substantiate the district court's denial of the Petitioner's Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant to Fed. R. Civ. P. 60(b)(6). The Fourth Circuit panel also erred when they did not address the questions that were raised, which were of exceptional importance in the proceedings.

The petition for a writ of certiorari should be granted because the district court judge erred when he denied S.L.'s Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Fed.R.Civ.P. 60(b)(6). His decision is in direct violation of IDEA'97 and The Equal Protection Clause of the 14th Amendment, which is a "Compelling State Interest". The petition for a writ of certiorari should also be granted because the district court judge's decision will set a precedence that will discriminate against disabled students with S.L.'s form of sickle cell disease and students who do not have the Hb-SS form of the disease. The petition for writ of certiorari should be granted because this case is "capable of repetition, yet evading review".

RELIEF SOUGHT

S.L. humbly requests this Supreme Court of the United States to relieve her from the finality of the district court judge's decision to deny her Motion To Reconsider Plaintiff's Motion To Set Aside Judgment Pursuant To Fed.R.Civ.P.

60(b)(6). S.L. humbly requests this Supreme Court of the United States to reverse the Fourth Circuit's opinion which affirmed the district court judge's decision. S.L. also request this Honorable Court to award attorney's fees in the form of monetary relief and grant such other relief as the Court may find to be appropriate. S.L. requests oral arguments, which she believes will assist the Court in deciding this case.

Respectfully submitted,

Cynthia Lee
on behalf of her daughter S.L.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

03-2405
[Filed 27, 2004]

S. L. , by her mother, Cynthia Lee
Plaintiff-Appellant,

v.

PRINCE WILLIAM COUNTY SCHOOL BOARD
Defendant-Appellee

ORDER

Appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

Entered for a panel comprised of Judge Niemeyer , Judge Widener, and Judge Traxler.

For the Court,

/s/ _____
Patricia S. Connor, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-2405

[April 30, 2004, Submitted]
[June 17, 2004, Decided]

S. L., by her mother, Cynthia Lee,)
Plaintiff - Appellant,)
)
v.)
)
PRINCE WILLIAM COUNTY)
SCHOOL BOARD,)
Defendant - Appellee.)
)

COUNSEL:
Cynthia Lee, Appellant Pro se.

Mary Ellen McGowan, SICILIANO, ELLIS, DYER & BOCCAROSSE, Fairfax, Virginia, for Appellee.

JUDGES: Before WIDENER, NIEMEYER, and TRAXLER, Circuit Judges.

OPINION PER CURIAM:

S. L., a minor, by her mother, Cynthia Lee, appeals the district court's order entered on October 27, 2003, denying her motion to reconsider the court's order denying her motion to set aside the judgment pursuant to Fed. R. Civ. P. 60(b)(6).* We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See *S.L. v. Prince William County School Bd.*, No. CA-02-1216-A (E.D. Va. filed Oct. 24, 2003 & entered Oct. 27, 2003). We also deny S. L.'s motion to expedite; we grant S. L.'s motion to amend her docketing statement. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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* Because S. L.'s notice of appeal is not timely as to either the underlying judgment or her first motion to set aside the judgment, we consider the appeal only as it relates to the order entered October 27, 2003.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil No. 02-1216-A

[Filed Oct. 24, 2003

SHAUNTE D. LEE, by her mother, CYNTHIA LEE, Plaintiff,	)
v.	)
PRINCE WILLIAM COUNTY SCHOOL BOARD Defendant.	)

ORDER

For the reasons stating the accompanying memorandum opinion, it is hereby ORDERED that:

1) the Plaintiff's Motion to Reconsider Plaintiff's Motion to Set Aside Judgment Pursuant to Federal Rule of Civil Procedure 60(b) (6) is DENIED;

2) Defendants request for an award of attorneys' fees is DENIED;

3) should Plaintiff wish to appeal, he shall file his notice of appeal within thirty (30) days of the date of entry of this Order; and;

4) the Clerk of the Court shall forward copies of this Order and the accompanying Memorandum Opinion to all counsel of record.

October 24, 2003
Alexandria, Virginia.

/s/_____
United States District
Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Civil No. 02-1216-A

SHAUNTE D. LEE, by her mother, CYNTHIA LEE, Plaintiff,	)
v.	)
PRINCE WILLIAM COUNTY SCHOOL BOARD Defendant.	)

MEMORANDUM OPINION

This matter is before the Court on Plaintiff's Motion to Reconsider Plaintiff's Motion to set Aside Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) .

I. Background

This case involves the appeal of an administrative decision denying special education services under the Individuals with Disabilities Education Act ("IDEA").[1] In particular, Plaintiff Shaunte Lee ("Lee"), a student in the Prince william County

[1] See generally, 20 U.S.C. §§ 1400 et seq.

School District, requested receipt of special education services under the IDEA claiming that she was qualified for such services because she suffers from sickle cell anemia.

Following a substantive administrative hearing, at which documents, reports and test results were reviewed, witnesses were presented and cross-examined, and at which Lee was represented by counsel, the hearing officer decided that Lee was not entitled to receipt of special education benefits because Lee's sickle cell anemia did not cause her to have limited strength, vitality or alertness and Lee's sickle cell anemia did not adversely affect her school performance.

Lee timely appealed that decision by filing suit in this court on August 16, 2002. After hearing oral arguments, this Court issued a Memorandum Opinion (the "Opinion") and Order granting defendant Prince William County School Board's ("Defendant" or "the School") motion for summary judgment and denying Lee's motion for summary judgment on February 24, 2003.

Although the clerk entered the Order and Opinion on February 24, 2003, Hunter Harrison ("Harrison"), counsel for Lee at the time of the argument on summary judgment, claims that he did not receive a copy of the Order and Opinion until March 30, 2003, 34 days after the date of entry of the Order. After receiving the Order and Opinion, Harrison told Lee that he would not pursue an appeal on her behalf and that he would cease representing her in this matter.

Lee's mother subsequently filed a motion on behalf of Lee on July 22, 2003 seeking to set aside this Court's Opinion and Order. After a hearing, this Court denied Lee's motion on September 8, 2003. On September 23, 2003, Lee filed a motion to reconsider Plaintiff's motion to set aside judgment

pursuant to Fed. R. Civ. Proc. 60(b) (6). This motion also requested that the Court admit additional evidence. The court, in accordance with Local 7(I), declined to hear oral argument on Plaintiff's motion.

II. Plaintiff's Motion to Reconsider

The Plaintiff's motion is a motion to reconsider under Fed. R. Civ. P. 59. This motion must be filed within 10 days after entry of judgment, not within 10 days of the entry of a motion.[2] In the instant case, the summary judgment was entered on February 28, 2003. This motion was not filed until September 23, 2003. Therefore, Plaintiff's motion was not timely filed. Because a motion under Fed. R. Cir. p. 59(e) would be untimely, the Court is giving the Plaintiff the benefit of the doubt and treating the motion as one brought under Fed. R. Civ. P. 60(b)[3]

A. Standard of Review

The Court's consideration of a Rule 60(b) motion proceeds in two stages. First, a movant must meet each of the three threshold considerations: (1) the motion is timely; (2) the moving party has a meritorious defense to the action; and (3) the opposing party would not be unfairly prejudiced by having

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[2] Fed. R. Civ. P. 59(b) states that "Any motion for a new trial shall be filed no later than 10 days after entry of the judgment. Fed. R. Civ. P. 59(e) states that the "Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

[3] A motion to reconsider may be filed under Fed. R. Civ. P. 59(e) as a motion to alter or amend the judgment, or under Fed. R. Civ. P. 60(b) as a motion seeking relief from judgment. See *Small v. Hunt*, 98 F.3d 789, 797 (4th Cir. 1996).

the judgment set aside, See *Nat'l Credit Union v. Gray*, 1 E.3d 262, 2G4 (4th Cir. 1993).

Having met the threshold requirements, a movant must satisfy one of the six grounds enumerated for relief under Rule 60(b). Id. at 266. Under Rule 60(b), "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons": (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could have been discovered in time to move for a new trial under Rule 59(a) ; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b).

Whether to grant or deny a Rule 60(b) motion is within the sound discretion of the district court. See *Evans v. United Life & Accident Ins*, Co., 871 F.2d 466, 472 (4th Cir. 1989). A Rule 60(b) motion should only be granted upon a showing of "exceptional circumstances., *Dowell v State Farm. & Ca. Auto Ins*. Co., 993 F.2d 46, 48 (4th Cir. 1993). A Rule 60(b) motion is not authorized when it is nothing more than a request for the district court to change its mind. *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982); see also *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983) (stating that a motion to reconsider cannot appropriately be granted where the moving party simply seeks to have the Court "rethink what the Court has already thought through--rightly or wrongly").

B. Analysis

Plaintiff is requesting that this Court reconsider its previous denial of Plaintiff's motion under Rule 60(b) (6) . Plaintiff also requests that the Court admit and consider additional evidence. In the September 8th opinion, the Court held that Plaintiff failed to meet the second and third prongs of the threshold showing under Rule 60(b). See Lee v. Prince William County Sch. Bd., No. 02-1216, Mem. Op. at 6-7 (E.D. Va. Sept. 8, 2003). The Court held that Plaintiff could not demonstrate that she had a "meritorious defense." Id. at 6 Furthermore, the Court held that reopening the judgment would unfairly prejudice the Defendant. Id. at 7.

Considering the instant motion, the Court finds no reason to reconsider its ruling of September 8, 2003. Plaintiff, essentially, reiterates arguments previously presented to this Court. Considering the motion under Rule 60(b), the Court still holds that the Plaintiff has demonstrated neither a "meritorious" defense, nor an absence of prejudice to the Defendant.

For these reasons, the Court will deny the Plaintiffs motion for reconsideration under Rule 60(b).

III. Defendant's Motion for Attorneys' Fees

Defendant moves for an award of *attorneys'* fees associated with the expense of defending a matter already decided by this Court. Under Rule 11, the Court may award attorneys fees against litigants who file motions for "any improper purpose, such as to harass or to cause *unnecessary* delay or needless increase in the cost of litigation.- Fed. R. Civ. P. 11 (b) (1). sanctions may also be imposed upon those

who file motions lacking any legal basis. Fed. R. Cir. P. 11(b)(2) .

The Court holds that an award of attorneys fees in this case is not warranted. Pro se litigants receive a greater deal of leeway. When pro se litigants are involved, courts are presented with a "special dilemma." *Beaudett v. City of Hampton* 775 F.2d 1274, 1277 (4th Cir. 1985). In particular, pro se claims often present courts with "obscure Or extravagant claims defying the most concerted efforts to unravel them." *Id.* Nevertheless, the Fourth Circuit has recognized an "indisputable desire that those litigants with meritorious claims should not be tripped up in court on technical niceties." *Id.* at 1277-78 (citing *Gordon v Leeke*, 574 F.2d 1147 (4th Cir. 1978).

The Court does not find that Plaintiff's motion was presented for any improper purpose or that an award of attorneys fees is warranted under Rule 11. Plaintiff is put on notice, however, that this matter has been decided by this court three times (including the award of summary judgment to the Defendants). The Plaintiff may appeal this Court's decision, but it may not file another motion requesting that this court reconsider its past rulings.

IV. Conclusion

For the foregoing reasons, the Court will DENY the Plaintiff's Motion to Reconsider Plaintiff's Motion to Set Aside Judgment Pursuant to Federal Rule of Civil Procedure 60 (b)(6).

October 26, 2003
Alexandria, Virginia